IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.D-484-DB of 2006
Decided on .12.2012

Dilbagh Singh s/o Sh.Surinder Singh,
r/o Ruru Wala, Police Station,
Harike, Distt. Amritsar.

.....Appellant

Versus

State of Punjab .....Respondent

AND

CRA No. D-528-DB of 2006

Paramjit Kaur w/o Balwinder Singh,
r/o Chohla Sahib, Distt. Amritsar.

.....Appellant

Versus

State of Punjab .....Respondent

AND

CRA NO.D-527-DB OF 2006

Gursahib Singh @ Saba s/o
S.Joginder Singh, r/o Sabhra,
Distt. Amritsar.

.....Appellant

Versus

State of Punjab .....Respondent

AND

CRA NO.963-DB OF 2006

Pargat Singh s/o Joginder Singh,
r/o Chohla Sahib, Tehsil Patti,
Distt. Amritsar.

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM HON'BLE MR. JUSTICE S.S.SARON

HON'BLE MR. JUSTICE S.P.BANGARH

Present Mr.Vinod Ghai, Senior Advocate (amicus curiae)
with Mr. Sanjeev Sharma, Advocate for appellant Pargat Singh in Crl. Appeal No.D-963-DB of 2006.

Mr. Vaneet Sharma, Advocate, for appellant Dilbagh Singh in Crl. Appeal No. D-484-DB of 2006.

Mr. D.S.Pherumen, Advocate, for appellants Paramjit Kaur and Gursahib Singh @ Saba in CRA No. D-528-DB of 2006 and CRA No. D-527-DB of 2006 respectively.

Mr.P.S.Thethi, Additional Advocate General, Punjab
for respondent.

S.P.BANGARH, J

Since all the appeals i.e CRA No. D-484-DB of 2006, titled Dilbagh Singh v. State of Punjab, CRA No.D-528-DB of 2006, titled Paramjit Kaur v. State of Punjab, CRA No. D-527-DB of 2006, titled Gursahib Singh @ Saba v. State of Punjab and CRA No. D-963-DB of 2006, titled Pargat Singh v. State of Punjab, have arisen from the common impugned judgment and order, these shall be decided by this common judgment.

The appellants in all the appeals have assailed the judgment of conviction and order of sentence dated 03.06.2006, passed by the learned Additional Sessions Judge (Adhoc), Amritsar, in Session Case No. 57/FTC/2005/2006, Trial No. 6/2006, emanating from FIR No.78 dated 22.04.2005, under Sections 364-A, 302, 201, 212, 216 and 120-B of the Indian Penal Code ('IPC' for short) of Police Station, Patti, whereby, they were convicted for commission of offences punishable under Sections 120-B, 364, 302 read with Section 34 and 201 IPC and sentenced to undergo imprisonment for life each and to pay fine of ₹2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of two months each for commission of offence punishable under Section 302 read with Section 120-B IPC. Since, they had been sentenced under Section 302 IPC, the learned trial Court in the impugned order of sentence observed that there is no need to pass separate sentence under Section 364-A IPC.

Case of the prosecution is that about two years prior to the registration of the case, Balbir Singh complainant had gone to Uttar Pradesh after selling his three acres of land. He has two daughters and one son. His eldest daughter Rani is aged 14 years and his son Gurbhajan Singh is younger to her and aged 12/13 years at the time of registration of the case. Before going to Uttar Pradesh, he had left his children with his elder sister Bhajan Kaur wife of Karaj Singh at Algaon. His son was studying in a school at village Algaon. Complainant stayed in Uttar Pradesh for about one year, but he could not purchase the land there at cheaper rates and, therefore, he alongwith his wife came back and started residing with his brother Malkiat Singh at Patti. He also purchased one plot and started construction, thereon. His son had

passed third standard.

On 18.04.2005, at about 08:30 a.m, son of the complainant alongwith his mother Kuldip Kaur went to the shop of his uncle for making telephone call on PCO, as the wife of the complainant was to talk to her elder sister Bhajan Kaur at Algaon Kothi. As the telephone call could not be made because of lines being busy, wife of the complainant came back to her house leaving her son on the PCO booth with his aunt Balwinder Kaur. After some time, Balwinder Kaur sent message to his wife that phone line was clear and as such, his wife went to PCO to talk on telephone. When she reached there, she found her son Gurbhajan Singh missing from that place. Thereupon, she informed him (the complainant) and the complainant and others searched for Gurbhajan Singh, but he could not be traced out. Gurbhajan Singh was having wheatish complexion, cut hair and black mole on the right side of the chin. He was wearing read coloured T-shirt and black trouser.

At that time, the complainant did not suspect anyone. On 20.04.2005, a telephone call was received on the PCO of his brother Malkiat Singh from mobile phone no. 98550-63853 of an unknown person at the evening time, that his son Gurbhajan Singh was in their custody and this person demanded ransom of ₹ 5,00,000/- for releasing his son. The said call was heard by Comrade Bachhitar Singh and he had talked to him also. Complainant and his wife also had a talk with Gurbhajan Singh @ Sonu. Complainant made request that he is a poor person and is not in a position to arrange huge amount of ₹5,00,000/-. Thereupon, the person on the other side of telephone, asked him to arrange, whatever, he could and told that he will call again. Threat was also given to him against reporting the matter to the police, failing which,

his son will be done to death. Complainant consulted his family members and did not talk to anyone. On 21.04.2005, again call was received on PCO from the same mobile number at 10:00 p.m telling that if the money had been arranged, they could come near village Bhagupur on the road, and not more than two persons should come. They should not bring any weapon or inform the police otherwise bad results will follow. The said call was again heard by Comrade Bachhitar Singh and complainant and they were even allowed to talk to his son. Again, the matter was not reported to the police.

Complainant alongwith Bachhitar Singh started on motor cycle with an amount of ₹ 1,90,000/-,which he had arranged, and both of them reached Bhagupur on pucca road. Comrade Bachhitar Singh contacted these persons from his mobile phone and they were instructed to come to village Kirtowal. As such, they went to village Kirtowal and from there, they were instructed to reach village Gandiwind and when they reached there, they were instructed to reach near Chaube near Palli and they reached there. They were asked to leave money there and go back and told that at some distance from tubewell, they will find their son. As such, the complainant left bag of orange colour containing ₹1,90,000/-, whereon his name had been written. Then, they started towards tubewell and one person came and took away bag of money and went towards riverbed and they saw that person in the light of motorcycle and one of the persons was aged 24/25 years, having yellow patka on his head and having cut hair and beard.

When complainant reached at the tubewell, his son was not there. He and Bachhitar Singh tried to contact those persons on phone, but could not be contacted. Then, they started towards Police Station to

report the matter and in the way, police met them and statement of the complainant Ex.PC was recorded, on the basis of which, formal FIR Ex.PC/2 was recorded in Police Station Patti. Initial occurrence had taken place on 18.04.2005 in the area of Patti at about 08:30 a.m. Initially FIR Ex.PC/1 was registered on 22.04.2005 at 06:30 p.m under Section 364-A IPC, later on 24.04.2005, offence under Section 302 IPC was added vide Ex.POO.

Investigating Officer collected records regarding mobile phone from the office of Spice, Amritsar. He visited the place of the occurrence on 22.04.2005, prepared rough site plan and recorded statements of the witnesses. On examination of the record of spice, it was found that Prem Singh @ Raja, distributor of Goindwal had issued said telephone. Therefore, Investigating Officer went to Goindwal and got record from Prem Singh and same was taken into possession vide memo Ex.PO. Telephone was in the name of Inderjit son of Rachhpal Singh, Jat, resident of village Bhall, however, no person was found of the said name in the village Bhall.

As per description given by Prem Singh, sketch of the person was prepared in the office of Senior Superintendent of Police. Darshan Singh, Ex-Sarpanch resident of village Chugian Batha Singh met police party at Patti and his statement was recorded and from the sketch, he identified Pargat Singh, appellant (accused). On 24.04.2005, raid was conducted at the house of Pargat Singh appellant (accused) and he alongwith Gursahib Singh appellant (accused) was apprehended. Herohonda motorcycle was recovered on that date, which was taken into possession vide memo Ex.PV. In the presence of Birpal Singh, Sub Divisional Magistrate, Tarn Taran, recovery of the corpse of Gurbhajan

Singh @ Sonu was effected on the identification of the appellants, on the basis of disclosure statements made by them. Photographs of the corpse were taken. Compact disc was also prepared. Inquest report of the corpse of Gurbhajan Singh @ Sonu was prepared and the same was sent to the mortuary of Civil Hospital Patti for autopsy.

On 25.04.2005, Gursahib Singh and Pargat Singh appellants were interrogated and pursuant to the disclosure statements, Gursahib Singh got recovered ₹90,000/-, while Pargat Singh got recovered ₹93,000/-, which were taken into possession by the police. After the postmortem examination, clothes of the deceased were produced by Hira Singh, HC before Investigating Officer Station House Officer and those were made into a parcel, which was sealed and seized vide memo. On 26.04.2005 Gursahib Singh and Pargat Singh appellants were again interrogated and pursuant to their disclosure statements, they got recovered mobile phone having no.98550-63853 from the house of Paramjit Kaur appellant (accused), located in village Chohla Sahib which was taken into possession. On 27.04.2005, offences under Sections 212, 216 and 120-B IPC were added. On 29.04.2005 Ex-sarpanch made a statement that he had heard appellants (accused) talking about the occurrence. Paramjit Kaur appellant (accused) suffered disclosure statement, which was recorded and pursuant, thereto, she got recovered ₹3,500/- from her house, which were taken into possession. Dilbagh Singh appellant also suffered disclosure statement and pursuant, thereto, he got recovered ₹3,500/- from his house and one black coloured trouser, which Gurbhajan Singh was wearing, was also taken into possession.

On 02.05.2005, Mangal Singh, Photographer produced the

photographs and compact disc, which were taken into possession. On 06.05.2005, bills of PCO were also produced and taken into possession.

After completion of investigation, Station House Officer of Police Station Patti, District Tarn Taran instituted police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C' for short) before the learned Illaqa Magistrate to the effect that it appears that the appellants have committed offences punishable under Sections 364-A, 302, 201, 212, 216 and 120-B IPC.

On presentation of police report, copies of documents, as required under Section 207 Cr.P.C were furnished to the appellants and the case was committed to the Court of Session for trial, which was entrusted to learned Additional Sessions Judge (Adhoc), Amritsar, who, on receipt of Sessions case, framed charge under Sections 120-B, 364, 302 read with Section 34 and 201 IPC against all the appellants, whereto, they pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

At the trial, prosecution examined as many as twenty two witnesses, whose deposition is as under:-

PW1 Dr.Gurpreet Singh Rai, Medical Officer, Civil Hospital, Patti conducted autopsy on the corpse of Gurbhajan Singh @ Sonu and found following injuries on the same:-

1. Multiple abrasion present on front and both sides of neck. On dissection under line muscles lacerated, trachea larynx and pharynx congested, sub continuous tissue ecobymosed;
2. An abrasion 3 cm x 2 cm on top of left shoulder joint;
3. An abrasion 3cm x 2 cm on right side of fore-head, right eye swollen and congested and

4. An abrasion 4cm x 3 cm on lateral side of left leg just below knee.

PW1 further testified that sutured loosened on scalp, brain matter liquefying, walls ribs and cartilage's of thorax putrefying pleura congested, lungs congested, right side of heart full of blood. Paretonial putrefying. Stomach, a part of small intestine, piece of liver, spleen and one kidney sent to chemical Examiner, Patiala. He also testified that in the opinion of the medical board, the cause of death in the case appears to be asphyxia due to injury no.1, which was sufficient to cause death in ordinary course of nature. He also testified that all the injuries were ante mortem in nature and caused by blunt weapon. PW1 also testified that probable time between injuries and death was immediate and between death and postmortem was three to five days. He also testified that on receipt of report of Chemical Examiner to Govt. Punjab, alcohol was detected in the contents Ex.I, II and III. No poison or alcohol was detected in Ex.IV. He brought the original autopsy report and proved copy, thereof, Ex.PA. He also proved the report of the Chemical Examiner Ex.PB.

PW2 Balbir Singh testified that Gurbhajan Singh, aged 12 years at the time of his death, was his son and Malkiat Singh, his brother, is running a PCO at his house and four months prior to 18th of the month, his wife along with her son Gurbhajan Singh went to PCO of his brother Malkiat Singh at 08:30 a.m to make call to his sister at Algaon Kothi, but she could not be contacted and after leaving Gurbhajan Singh at the PCO, she came back and after 5/6 minutes, she received a message from Balwinder Kaur, through a lady neighbourer,

that a telephone call has come from his sister and his wife went to the PCO to attend the call, but she did not find Gurbhajan Singh there and they ran here and there; they tried to find him for 3/4 hours and then they went to Police Station Patti to lodge the report, which was lodged for missing of his son with the police.

He further testified that on 20.04.2005, a telephone call was received on the PCO of Malkiat Singh at 09:30 p.m, when he happened to be present there, and that call was attended by him and maker of the call told him that his son Gurbhajan Singh was in their custody and they will release him on payment of ₹5,00,000/- and he requested the maker of the call that he being a poor person, was not in a position to make payment and he did not relent and fearing that Gurbhajan Singh be done to death, he did not inform the police; on 21.04.2005, a telephone call was received on the PCO of Malkiat Singh at 10:00 p.m and he attended the call and was requested by maker of the call to see them with the amount of ransom and they also made his son to talk to him and he informed the person that he has managed to have ₹1,90,000/- and they directed him to bring that amount at village Bhagupur.

PW2 (complainant) took the amount and along with Bachhitar Singh went to that place and latter was having mobile at that time and they were present at village Bhagupur and the call was received by Bachhitar Singh that those persons required to see them at village Kirtowal and when they went to that village, they could not find the kidnappers and again telephone call was received by Bachittar Singh that those persons required them to reach the bridge of Chambewal; and they went to that place and were told to place the money; they placed a bag containing ₹1,90,000/- of yellow colour there,

on which his name was written. PW2 further testified that they also asked them to see Gurbhajan Singh at a tubewell at a distance of one killa from that place. He further testified that they were on motorcycle and when they turned motorcycle towards tubewell, he saw a person wearing yellow patka who picked the bag and ran away, who was identified as Pargat Singh by this witness, who also testified that they could not find Gurbhajan Singh anywhere and, thereafter, they could not establish contact with kidnappers. He also testified that on 22.04.2005, they met the police at village Sangwan, where he got recorded his statement Ex.PC, which was thumb marked by him in token of its correctness.

PW3 Bachhitar Singh also testified likewise and corroborated the testimony of PW2.

PW4 Mangal Singh, Photographer testified that on 24.04.2005, he was called by Station House Officer, P.S, Patti at a place near village Chamba and in his presence, corpse of Gurbhajan Singh @ Sonu was got recovered by Pargat Singh and Gursahib Singh appellants, which they had kept buried and on that occasion, he took photographs, whose negatives are Ex.P1 to Ex.P10 and those photographs were enlarged, which are Ex.P11 and Ex.P20 and those were handed over to the Station House Officer by him on 02.05.2005, which were taken into possession vide memo Ex.PG.

PW5 Darshan Singh also testified that on 18.04.2005,

he was going on motorcycle from Patti to village Jhugian and on the way at 09:00 a.m, near Workshop of Roadways, Patti, Gursahib Singh and Pargat Singh appellants came from his back side on motorcycle, which was being driven by Pargat Singh appellant and he also saw Gurbhajan Singh @ Sonu son of Balbir Singh sitting on the motorcycle in between Pargat Singh appellant and Gursahib Singh appellant, who were previously known to him. He further testified that after 4/5 days, he learnt that Gurbhajan Singh son of Balbir Singh had been kidnapped and he met Malkiat Singh, brother of Balbir Singh and told him that he had seen Pargat Singh and Gursahib Singh appellants taking Gurbhajan Singh on motorcycle; after five days police also met him and he went to village Chamba with police and they saw Pargat Singh appellant at village Chohla Sahib on Herohonda motorcycle who was over powered by the police and interrogated for about three hours and he disclosed that he had kept buried the dead body of Sonu near the bridge and he took the police to the disclosed place and got recovered the corpse, which was identified by him and inquest report Ex.PS, on the corpse was prepared by police in his presence.

PW6 Malkiat Singh testified that he runs PCO at his house at Patti and on 18.04.2005 at about 08:00 a.m, Baljit Kaur wife of his brother Balbir Singh along with her son Gurbhajan Singh (deceased) came to make telephone call to the sister of her husband at Algaon Kothi and she went back leaving her son Gurbhajan Singh (deceased) there

and after ten minutes, telephone call was received from his sister for Balbir Singh and he sent message to him and Baljit Kaur came there at the PCO and in the meantime, Gurbhajan Singh was found missing from the PCO and could not be found albeit efforts made by them.

PW6 further testified that on 20.04.2005, at about 10:00 p.m, a telephone call was received on his PCO, when besides him, Balbir Singh and other family members were also present, which was heard by Bachhitar Singh, Balbir Singh and Baljit Kaur turn by turn and this telephone was made from mobile no.98550-63853 and on 20.04.2005/21.04.2005, he (PW6) again talked on the same mobile number and both Gursahib Singh and Pargat Singh appellants told that they have received ₹1,90,000/- and they shall release the boy after receiving the remaining amount and third call was made by him (PW6) after a minute requesting them not to kill the boy, as he will pay the remaining amount of ransom. He also testified that his trunk dialing number was 01851242551 and the bills of calls made from the PCO on the mobile of the accused are Ex.P21, Ex.P22 and Ex.P23, which were lateron handed over by him to police on 06.05.2005 and those were seized vide memo Ex.PH.

PW7 Harjinder Singh, Constable testified that on 22.04.2005, he was posted at Police Station, Patti and on that day, special report of this case was entrusted to Gurmail Singh, ASI for delivery, thereof, to the Sub Divisional Judicial Magistrate, Patti on the same day, which was delivered to him at 11:00 a.m.

PW8 Balwinder Singh, Constable testified that on 24.04.2005, he was posted at Police Station Patti, on which date, special report of the case was entrusted to him by SHO, Balbir Singh and on the

same day, he delivered the same to the Illaqa Magistrate at 05:00 p.m.

PW9 Karam Singh testified that he deals in the trading of cattle and Pargat Singh appellant was known to him who runs scooter repair shop at his village. He testified that on his request, loan of ₹15,000/- was given by him to Pargat Singh, in the month of November 2004 and the latter had promised to reimburse the same by 15.04.2005 and on the latter date, he went to his shop and demanded the loan amount ibid and he promised to repay the same on 20.04.2005 and on that day, he found his shop closed and, thereafter, he went to the house of Gursahib Singh appellant, who was not there; his mother was there, who told him that he and Pargat Singh appellant had gone to Delhi to purchase goods and on 21.04.2005, he went to the house of Pargat Singh in village Chohla Sahib, but he was not present at the house and met his mother, who told him that he had gone to the farm house of Paramjit Kaur and, thereafter, he went there and the door of the farmhouse was found open and he saw Pargat Singh, one lady Paramjit Kaur, one young man Dilbagh Singh, who is present in the Court and Gursahib Singh appellant there and he heard Pargat Singh and Gursahib Singh appellants talking with each other that they had demanded ₹5,00,000/- and Paramjit Kaur appellant was saying that the amount of ₹2,00,000/- be accepted and (he saw the boy aged 12 years at the house of Gursahib Singh appellant) and if something happens to the boy, they will have to suffer and Paramjit Kaur appellant was also saying to others that they had been leaving the boy with her and in case of his slipping away, she could be in trouble and Pargat Singh appellant suggested her that they will leave Dilbagh Singh at her house to guard the house and he saw Paramjit Kaur appellant torturing the boy inside

the room; then he went inside the house and met Gursahib Singh appellant and demanded back amount borrowed from him and he promised to pay him the money in a day or two and after six days, he appeared before the Inspector General of Police and made statement.

PW10 Rishi Ram Draftsman testified that scaled site plan Ex.PJ was got prepared from him by Bachhitar Singh PW9 at the spot.

PW11 Satnam Singh, MHC tendered in evidence his affidavit Ex.PA.

PW12 Hira Singh, HC tendered in evidence his affidavit Ex.PL.

PW13 Balkar Singh, SI conducted investigation of this case and testified on the lines of investigation.

PW14 Anokh Singh testified that on 29.04.2005 when was present at his house at 07:00 a.m, Paramjit Kaur and Dilbagh Singh appellants came to him and Paramjit Kaur appellant told him that they had kidnapped a boy from Patti on 25.04.2005, who later on was murdered by them and she also told that the name of the kidnapped boy was Gurbhajan Singh. He further testified that Paramjit Kaur appellant told him that they had to take ransom from the parents of the boy and payment of only ₹1,90,000/- was paid by the parents of boy towards demanded ransom of ₹5,00,000/- and Dilbagh Singh appellant also made statement before him to this effect and they requested him to produce them before the police and he took them to Police Station Patti and produced them before Manjit Singh, ASI on way to Police Station near State Bank at Patti and Paramjit Kaur appellant was interrogated by Manjit Singh,ASI in his presence, who disclosed that she had kept ₹3,500/-at her house at ChohlaSahib and could get those recovered and

her disclosure statement Ex.PFF was recorded and then Dilbagh Singh appellant also suffered disclosure statement Ex.PGG that he has kept concealed Rs.3,500/- at his house in village Ruriwala and could get those recovered and pursuant to their disclosure statements, both the appellants got recovered amounts mentioned in their statements ibid and those were seized vide recovery memos Ex.PHH and Ex.PJJ respectively, which were signed by him. He also testified that currency notes were of the denomination of Rs.100/-.

PW15 Gurnam Singh also testified that on 25.04.2005, he went to the dairy of Nijjarwala at village Sabrah to sell his milk, where he was joined by the police party headed by Paramjit Singh, ASI and Gursahib Singh appellant was in the custody of police and the latter took former to his house and got recovered from wheat chaff, a hand bag containing currency notes of ₹90,000/-, each note of the denomination of ₹100/- and those were seized vide memo Ex.PY, which was signed by him. He also testified that Pargat Singh appellant who was also in the custody of the police after this recovery having been effected from Gursahib Singh also took them to his house at Chohla Sahib and got recovered currency notes of ₹93,000/-, each note of the denomination of ₹100/- and those were also seized vide memo Ex.PAA, which was signed by him.

PW16 Sucha Singh, ASI also testified that on 24.04.2005, he joined investigation of this case with Balkar Singh and on that day, Gursahib Singh and Pargat Singh appellants were arrested from near the farm house of Pargat Singh, when they were trying to escape, therefrom, and they were taken into custody and motorcycle was also

taken into custody vide memo and Gursahib Singh suffered a disclosure statement Ex.PD to the effect that he has kept buried the corpse of a kidnapped boy near the water course of village Chamba and he could get the same recovered and then Pargat Singh appellant was also interrogated, who also suffered disclosure statement Ex.PE to the similar effect, which was suffered by Gursahib Singh appellant and pursuant to, their disclosure statements, both led the police party to the place of concealment of the corpse of Gurbhajan Singh and got recovered the same.

PW16 further testified that on 25.04.2005, both Pargat Singh and Gursahib Singh appellants were interrogated and during interrogation, they also suffered disclosure statements and pursuant, thereto, they got recovered ₹93,000/- and ₹90,000/- respectively from the place disclosed in their disclosure statements. He also testified that on 26.04.2005, Paramjit Kaur appellant was interrogated, who suffered disclosure statement Ex.PCC to the effect that she has kept concealed mobile set underneath the trunk at her house and could get the same recovered and pursuant, thereto, she got recovered the mobile set, which was seized vide memo Ex.PDD. He also testified that on 07.05.2005, Balbir Singh produced photocopy of the bank account, which was seized vide memo Ex.PKK. He also testified that T.R.Sharma, Deputy Manager was joined in the investigation and withdrawal form was produced by him, which was seized vide memo Ex.PM. He also testified that photocopy of the form is Ex.PMM and trouser of the deceased was also identified by Balbir Singh in the presence of Dalbir Singh, Municipal Councillor and proved the parcel of the trouser Ex.P30. He also testified that his statement was recorded.

PW17 Balraj Singh also testified that on 24.04.2005, he was posted in CIA staff, Tarn Taran and on that day, on the receipt of message, he accompanied Mangal Singh, Photographer, Constable and went to a place in the area of village Chamba Kalan, where Balkar Singh, SI and the SDM were already present near the water course and Gursahib Singh and Pargat Singh appellants were in police custody, who in their presence, dug out the earth and got recovered the dead body of Gurbhajan Singh and scene was video graphed by him and photographs were also taken and videography was also handed over by him to Station House Officer, Police Station Patti. Balkar Singh, SI. He also proved cassette Ex.P24.

PW18 T.R.Sharma, Deputy Manager, Punjab National Bank, Patti testified that on 19.04.2005, he was posted as Deputy Manager, PNB, Patti and there was account no.5046 of Balbir Singh and from that account, a sum of ₹2,75,000/- was withdrawn on 19.04.2005 by Balbir Singh, account holder. He also testified that Ex.PNN is the photocopy of the withdrawal form and Ex.PLL is the account bank pass book issued in the name of Balbir Singh.

PW19 Balbir Singh, Sub Inspector testified that on 24.04.2005, he was posted at Patti and on that day, he was present at Police Station, where Amar Singh Constable brought a ruqa of SI Balkar Singh and on the basis, thereof, he made entry in the DDR, copy, thereof, is Ex.POO.

PW20 Bir Pal Singh, SDM testified that on 24.04.2005, he was posted as SDM, Tarn Taran and on that day, on receipt of a telephone message from SI Balkar Singh, S.H.O, P.S, Patti, he went to Chohla Sahib and some police officials were also there and Gursahib

Singh and Pargat Singh appellants were in custody of Balkar Singh SI and both led the police outside the village Chabha Dhaiwala and dug out the earth and got recovered dead body by removing the earth, which was of Gurbhajan Singh, which was identified by Malkiat Singh and Darshan Singh. He also testified that video-graphy of the proceedings of removal of the body from the earth was got conducted by Balkar Singh, SI. He also proved the recovery memo of dead body Ex.PF.

PW21 Prem Singh also testified that he is a Photographer and apart from that, he is a dealer of Spice Mobile and on 20.04.2005, Pargat Singh appellant came to his shop and got the SIM of mobile for his use from him and he gave the SIM card of mobile no.95550-63853, he disclosed his name as Inderjit son of Rachhpal Singh, Jat, resident of village Bhall**;** form Ex.PO was filled by him on 24.04.2005, police met him and he made statement about the mobile phone sold by him to Pargat Singh appellant. He also testified that he disclosed the particulars of the appellant i.e particulars of structure of his complexion etc. Particulars of the body of Pargat Singh appellant were disclosed by him to the control room at Tarn Taran and sketch was prepared by an employee on computer and he disclosed to the police one particular structure with turban and other without turban.

PW22 Manjit Singh, ASI also participated in the investigation and deposed on the lines of his participation in the investigation.

After the closure of the prosecution evidence, the appellants were examined under Section 313 Cr.P.C, wherein, they denied the allegations of prosecution, pleaded innocence and false implication in this case.

The appellants were called upon to enter in defence, but they closed the same without examining any witness in defence.

After hearing both the sides, learned trial Court vide impugned judgment and order of sentence, convicted and sentenced the appellants as described in the second paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court, have come up in this appeal with prayer for acceptance, thereof, and for acquittal of the charge framed against them.

Learned counsel for the appellants and learned Additional Advocate General for the respondent have been heard and record of the learned trial Court perused with their assistance.

Learned counsel for the appellants mainly contended that there is no direct or circumstantial evidence to connect the latter with the kidnapping of Gurbhajan Singh @ Sonu. They also contended that no-one saw appellants kidnapping Gurbhajan Singh @ Sonu and when there was no kidnapping of Gurbhajan Singh @ Sonu, then the question of demand of ransom does not arise. Even, it was contended that there is no evidence circumstantial or direct to the effect that any ransom was received by any of the appellants. They also contended that the alleged recovery of the ransom is utterly doubtful, as also, no one saw the appellants committing the murder of the deceased. They also contended that the corpse of the deceased Gurbhajan Singh @ Sonu was not allegedly buried by the appellants underneath the earth. Learned counsel for the appellants also contended that the evidence of last seen of the deceased and the appellants given by Darshan Singh PW5 cannot be accepted because of he being relative of Malkiat Singh, who is the brother of complainant Balbir Singh. He also contended that Malkiat

Singh is the maternal uncle of Anokh Singh and Darshan Singh and Anokh Singh are real brothers. Learned counsel for the appellants also contended that alleged ransom was demanded on 20.04.2005, while the amount was allegedly withdrawn on 19.04.2005 as per statement of Bank Manager, PW18. It was also contended on behalf of the appellants that Anokh Singh is a relative of complainant and such being the situation, there was no occasion for the appellants to choose relative of the complainant for making extra judicial confessions, which is a weak type of evidence.

On the other hand, learned Additional Advocate General for the respondent contended that Karam Singh PW9 is the witness of last seeing Pargat Singh and Gursahib Singh appellants with the deceased and all the appellants were seen together by PW9 in the house of Paramjit Kaur appellant. So, he contended that the evidence of all the prosecution witnesses was rightly relied upon by the learned trial Court for holding the appellants guilty for kidnapping and murder of Gurbhajan Singh @ Sonu and therefore, the well reasoned impugned judgment of conviction and order of sentence may not be interfered with through acceptance of instant appeals.

We have given our thoughtful consideration to the contentions raised by the learned counsel for the parties and our findings shall now follow:-

So far as the death of Gurbhajan Singh @ Sonu is concerned, there is the testimony of PW1 Gurpreet Singh Rai, Medical Officer, Civil Hospital, Patti, whose evidence has been reproduced in the earlier parts of this judgment. According to his testimony, there were four injuries on the corpse of Gurbhajan Singh @ Sonu and in the

opinion of the Medical Board consisting of PW1, the cause of death of Gurbhajan Singh @ Sonu appears to be asphyxia due to injury no.1. According to PW1, all the injuries were ante mortem in nature caused by blunt object. The evidence of this witness, during cross examination, could not be shattered. There is, thus, no reason to disbelieve the same and on the basis, thereof, it must follow that unnatural death of Gurbhajan Singh @ Sonu took place.

PW2 Balbir Singh is the complainant, who narrated the whole occurrence. His testimony has been reproduced in the earlier parts of this judgment, which indicates that his son went missing from the PCO of his brother Malkiat Singh at about 08:30 a.m on 18.04.2005 when his wife went to make a call to her sister-in-law at Algaon Kothi. Initially call could not mature and wife of Balbir Singh (PW2) had to come back to her house leaving Gurbhajan Singh (deceased) at the PCO of Malkiat Singh , located in the area of Patti. After 5/6 minutes, she received a message from Balwinder Kaur wife of brother of her husband that the telephone call has matured and therefore, wife of complainant went to attend the call, but Gurbhajan Singh was found missing.

So, in this manner, Gurbhajan Singh went missing from the PCO of Malkiat Singh, located in the area of village Patti and the evidence of PW2, on this point, could not be shattered and efforts were made to trace Gurbhajan Singh for 3/4 hours and then the report was lodged with the police regarding missing of Gurbhajan Singh. On 20.04.2005, telephone call was received at PCO of Malkiat Singh at 09:30 p.m when PW2 was present there, which was attended by him and the person making call told him that his son was in their custody and

the caller asked him to pay ₹5,00,000/- as ransom for his emancipation. It has come in evidence of PW2 Balbir Singh that he told the caller of phone that he is a poor person and is not in a position to make payment of that much amount, but the caller insisted, thereon, and fearing that Gurbhajan Singh may not be done to death, he agreed not to go to the police.

On 20.04.2005, telephone call was again received at 10:00 p.m at the PCO of Malkiat Singh and he was called there and was asked to come with the amount of ransom. Balbir Singh was also made to talk to him on the phone and his son stated that he was all right. PW2 then informed the caller on phone that he has arranged ₹1,90,000/- and that he was asked to come to village Bhagupur along with that amount and he along with Bachhitar Singh PW3 went to village Bhagurpur, where another call was received and then they were asked to come to the village Kirtowal and again they went there, therefrom, they were asked to come to village Gandiwind and from there, they were asked to reach at village Chambewal and at the bridge of Chambewal, telephone call was received telling that they have seen them and therefore, they should place the money there and thereupon, PW2 and PW3 placed a bag of yellow colour, on which, name of PW2 was written and they were asked to go back after putting the bag containing ₹1,90,000/- and were told that Gurbhajan Singh will meet them at the tubewell at a distance of one killa.

Lateron, a person wearing yellow patka on his head came and picked up the bag containing currency notes and his name was described as Pargat Singh appellant. PW2 and PW3 could not find Gurbhajan Singh and they even could not establish any contact with the

kidnappers. So, they informed the police on 23.04.2005 and statement of PW2 Ex.PC was recorded.

Bachhitar Singh PW3, who was accompanying Balbir Singh PW2 also corroborated the testimony of the latter. Both these witnesses were subjected to searching cross examination by the learned counsel for the appellants before the learned trial Court, but their cross examination failed to elicit anything worth the name, which could possibly cause any dent in their testimonies. There is no reason to reject their testimonies. They had no motive to testify falsely in this case. The son of PW2 went missing, so for his search, only a close relative like PW3 Bachhitar Singh, his brother, could be associated. If the matter would have been discussed with some other person, then that would have carried dire consequences. Thinking that no harm is caused to Gurbhajan Singh, PW2 and PW3 kept the matter secret from police and before getting the case registered, they tried their level best to get Gurbhajan Singh @ Sonu emancipated from the custody of the kidnappers, who had asked a ransom of ₹5,00,000/- for the emancipation of Gurbhajan Singh. Only ₹1,90,000/- could be arranged by PW2 and this amount was given and Pargat Singh appellant, who was identified by PW2 and PW3, picked up the bag containing ₹1,90,000/-.

It has come on the record that PW2 Balbir Singh had sold his land at Patti and he intended to purchase land at cheaper rates in Uttar Pradesh, but he could not do so and he came back Patti and was in search of some land to be purchased, so he was having sufficient amount and the appellants may be knowing that and keeping in view the financial position of PW2, appellants would have conspired to kidnap his

son for his eventual release, on receipt of ransom amount of ₹5,00,000/- and then the matter was settled for ₹2,00,000/- and out of which, an amount of ₹1,90,000/- was paid and the bag containing this amount was picked up by Pargat Singh appellant. So, in order to prove the demand of ransom by the appellants, there is a unanimous evidence of PW2, PW3 and PW6, which could not be shattered during cross examination and no circumstance has come on the record to disbelieve their depositions. No motive can be ascribed to them to make a false story of payment of ransom to the appellants for release of Gurbhajan Singh @ Sonu, who was abducted/kidnapped from Patti on 18.04.2005 at about 08:30 a.m.

So far as the receipt of ransom amount of ₹1,90,000/- is concerned, there is unanimous testimonies of PW2 and PW3 in this regard and that, too, also could not be shattered and that must lead to inevitable conclusion that a sum of ₹1,90,000/- was received by Pargat Singh appellant. To prove that Pargat Singh and Gursahib Singh appellants were seen in the company of Gurbhajan Singh @ Sonu (deceased), there is testimony of Darshan Singh PW5. He spotted Pargat Singh and Gursahib Singh appellants on the motorcycle and Gurbhajan Singh @ Sonu (deceased) was seen sitting in between them. This evidence cannot be rejected, as no motive can be ascribed to him to testify falsely in this case. It may be mentioned here that Pargat Singh was arrested in this case, who made a disclosure statement Ex.PE, whereas, Gursahib Singh was arrested on 23.04.2005, who made a disclosure statement Ex.PD, and pursuant, thereto they got recovered corpse of Gurbhajan Singh @ Sonu from the place disclosed in their disclosure statements.

At the time of recovery of the corpse of Gurbhajan Singh @ Sonu from the place disclosed by Pargat Singh and Gursahib Singh appellants, PW20 Birpal Singh, SDM, Tarn Taran was also associated and he also testified about the recovery of the corpse of Gurbhajan Singh @ Sonu at the instance of Pargat Singh and Gursahib Singh appellants. Photographs were also taken by PW4 Mangal Singh, Photographer.

So, the recovery of the corpse of Gurbhajan Singh @ Sonu at the instance of Pargat Singh and Gursahib Singh appellants has corroborated the testimony of PW5 Darshan Singh, who near Roadways workshop, Patti had seen Gursahib Singh and Pargat Singh appellants on a motorcycle driven by Pargat Singh appellant and Gurbhajan Singh @ Sonu sitting in between both Gursahib Singh and Pargat Singh appellants to whom he was knowing. PW5 learnt about the kidnapping of Gurbhajan Singh 4/5 days after 18.04.2005. Kidnapping of Gurbhajan Singh @ Sonu had taken place on 18.04.2005. Immediately after the kidnapping of Gurbhajan Singh @ Sonu, Pargat Singh and Gursahib Singh appellants were seen with former on motorcycle by PW5. So, in these circumstances, Pargat Singh and Gursahib Singh appellants were to explain as to how Gurbhajan Singh @ Sonu came in their company and when he departed from their company. So, when there is no defence evidence on the file, it follows that Gurbhajan Singh @ Sonu died unnatural death while in the company of Pargat Singh and Gursahib Singh appellants and they were arrested and interrogated and suffered disclosure statements and pursuant, thereto, they got recovered the corpse of Gurbhajan Singh @ Sonu. Motive for murder was that after his release, Gurbhajan Singh @ Sonu would have disclosed the identify

of the appellants to his parents and to the police and that would have brought a big trouble for the appellants and therefore, they thought it safe to eliminate Gurbhajan Singh @ Sonu and they wanted to have both the benefits. They received the amount and after his death, they thought that they will not have to face legal consequences.

So far as, Dilbagh Singh and Paramjit Kaur appellants are concerned, the material evidence against them is of Karam Singh PW9, to whom Pargat Singh owed ₹15,000/- and when PW9 went for return of money, he (Pargat Singh) was not present in the house and then he went to the house of Paramjit Kaur appellant and he saw all the appellants and Gurbhajan Singh @ Sonu (deceased) together and he heard their talks. So, he is also the witness of lastly seen all the appellants and the deceased together. So, it was for Paramjit Kaur and Dilbagh Singh appellants to explain as to when Gurbhajan Singh @ Sonu departed from their company. Evidence of Karam Singh PW9 could not be shattered during cross examination. No motive can be ascribed to him to testify falsely in this case. Mobile phone was purchased by Pargat Singh from the shop of Prem Singh PW20, but he purchased the SIM in the name of one Inderjit. PW20 got prepared the sketches Ex.PP and Ex.PQ of the Pargat Singh appellant on the basis of his memory. So, no motive can be ascribed to him to testify falsely in this case. Even Dilbagh Singh and Paramjit Kaur appellants suffered extra judicial confession before PW14 and there is no reason to disbelieve the testimony of this witness, as during cross examination, the same could not be shattered.

Even currency notes of ₹3,500/- each were recovered from these appellants pursuant to their disclosure statements. PW15 and

PW16 are the witnesses of recovery of ₹90,000/- from Gursahib Singh appellant and ₹93,000/- from Pargat Singh appellant. Their testimonies also could not be shattered. No motive can be ascribed to the police to implicate appellants falsely in this case., PW18 testified that Balbir Singh was having account in Punjab National Bank at Patti and an amount of ₹2,75,000/- was withdrawn by him from his account No. 5046 on 19.04.2005. He proved the passbook Ex.PN. So, this withdrawal would indicate that PW2 needed this amount for passing over the same to the appellants for emancipation of his son. This is the documentary evidence and does not cause any doubt in the prosecution version. There is nothing on the record to connect that Balbir Singh PW2 needed this amount for some other purpose than paying the same to the appellants for release of his son from their captivity.

Out of this amount of ₹2,75,000/-, an amount of ₹1,90,000/- was paid to the appellants for release of Gurbhajan Singh @ Sonu. Only Pargat Singh appellant picked up the bag containing ₹1,90,000/-. Later this amount was shared by all the appellants and an amount of ₹90,000/- fell to the share of Gursahib Singh, ₹93,000/- fell to the share of Pargat Singh and ₹3,500/- each fell to the share of Paramjit Kaur and Dilbagh Singh appellants each and this amount was later recovered from these appellants pursuant to their disclosure statements. This recovery would show that they were the recipient of the ransom amount of ₹1,90,000/-, which they had charged for release of Gurbhajan Singh @ Sonu from their captivity and the receipt of this amount by them and later recovery, thereof, from them indicate that Gurbhajan Singh @ Sonu (deceased) was in their company and they had committed his murder and later buried his dead body in the area of

village Chohla Sahib, which was lateron got recovered in the presence of PW17, PW20 and other police officials.

Mobile phone and motorcycle were also recovered from Pargat Singh and Gursahib Singh appellants. So, chain of circumstance in this case is complete. The fact remains that Gursahib Singh and Pargat Singh appellants kidnapped Gurbhajan Singh @ Sonu from Patti on 18.04.2005 and immediately after the kidnapping, they were seen on motorcycle with the deceased by PW5. Karam Singh PW9 also saw all appellants with deceased at the house of Paramjit Kaur appellant and this was a sufficient circumstance to base conviction on the appellants in view of **Shibu and another v. R.G.High Court of Karnataka and Anr. 2007(2) Crimes (SC) 24,** wherein, accused and deceased were last seen together near the scene of offence and they were convicted and sentenced on the basis of this circumstance. So, seeing the appellants in the company of the deceased rightly weighed in the mind of the learned trial Court to convict and sentence them, in view of the judgment of the Hon'ble Apex Court (supra).

This circumstance of last seen has been further corroborated by the recovery of the corpse of Gurbhajan Singh @ Sonu. Apart from that, there is extra judicial confessions of Dilbagh Singh and Paramjit Kaur appellants before PW14. Though, the extra judicial confession is a weak type of evidence, but in the case in hand, the same were voluntary and true and were made in a fit state of mind by Dilbagh Singh and Paramjit Kaur appellants and, therefore, were rightly relied upon as PW14 before whom such confessions were made had no prejudice against Dilbagh Singh and Paramjit Kaur appellants. No circumstance has come on the record that PW14 had animosity with

these appellants. No such circumstance has been brought on record, which may indicate that the witnesses had a motive to testify falsely against the appellants. There is no absolute rule that an extra judicial confession can never be the basis of conviction, as held by the Hon'ble Supreme Court of India in **Munna Kumar Upadhaya @ Munna Upadhyaya v. State of A.P Tr. Pub.Prosecutor 2012(3) Recent Apex Judgments (R.A.J) 185.** So, the evidence of last seen of the appellants with deceased, extra judicial confessions of Paramjit Kaur and Dilbagh Singh appellants, recovery of corpse of Gurbhajan Singh @ Sonu, as also, recovery of the ransom amount from the appellants rightly weighed in the mind of the learned trial Court to hold them guilty for commission of offences punishable under Sections 120-B, 364, 302 read with Section 34 and 201 IPC and for sentencing them, thereunder. Contentions raised by the learned counsel for appellants are, thus, repelled.

There is, thus, no illegality or impropriety in the impugned judgment of conviction and order of sentence, which are, hereby, upheld and affirmed.

Resultantly, all the appeals fail and are, hereby, dismissed.

(S.P. BANGARH)
JUDGE

(S.S. SARON)
JUDGE

1.12.2012
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